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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 09/748,529 | 12/22/2000 | M. Stephen Galland | 2039.006200/RFE | 4199 |
| 23720 | 7590 | 11/07/2003 | EXAMINER | |
| WILLIAMS, MORGAN & AMERSON, P.C. 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042 | | | ANTHONY, JOSEPH DAVID | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1714 | |

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/748,529 | GALLAND ET AL. | |
| | Examiner | Art Unit | |
| | Joseph D. Anthony | 1714 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

FINAL REJECTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, and 12-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodgers et al. U.S. Patent Number 6,517,776 or Cai et al. U.S. Patent Number 6,527,976 or Jerdee et al. U.S. Patent Number 6,333,087.

Rodgers et al. discloses UV/heat oxygen scavenging initiation in angular preformed packaging articles. The articles comprise an oxygen scavenging polymeric layer which can be a polymer having an ethylenic backbone and cyclic olefinic pendent group(s), see column 8, line 33 to column 9, line 44. Transition metal catalyst, barrier layer(s), photoinitiators, diluent layers etc. are all directly disclosed. The preferred method of initiating oxygen scavenging and sterilizing the article is by wetting the interior surface of the article with an aqueous hydrogen peroxide solution, drying the surface by removing the water, and exposing the "wetted" interior surface to UV/heat to initiate oxygen scavenging, see column 15, line 55 to column 16, line 64.

Cai et al. discloses oxygen scavenging compositions/articles. The articles comprise an oxygen scavenging polymeric layer which can be a polymer having an ethylenic backbone and cyclic olefinic pendent group(s), see column 4, line 36 to column 7, line 18. Transition metal catalyst, barrier layer(s), photoinitiators, diluent layers etc. are all directly disclosed. The oxygen scavenging polymer may be initiated

by UV radiation, heat or microwaves, see column 16, lines 11-59. When microwaves are used, it is preferable that a microwave reactive material be first applied to the surface of the oxygen scavenging composition/layer. A preferred such material is hydrogen peroxide solutions, see column 16, line 60 to column 17, line 22.

Jerdee et al. discloses UV/heat oxygen scavenging initiation in preformed packaging articles. The articles comprise an oxygen scavenging polymeric layer which can be a polymer having an ethylenic backbone and cyclic olefinic pendent group(s), see column 4 line 38 to column 5, line 15, and column 7, lines 22-51. Transition metal catalyst, barrier layer(s), photoinitiators, diluent layers etc. are all directly disclosed. Aseptic packaging conditions are preferably used. The preferred aseptic packaging method is to sterilize the article by wetting the interior surface of the article with an aqueous hydrogen peroxide solution, drying the surface by heat or UV radiation, to remove the water, and exposing the "wetted" sterilized interior surface to UV/heat to initiate oxygen scavenging, see column 9, lines 14-27.

Rodgers et al., Cai et al., and Jerdee et al have been described above. They all differ from applicant's claimed invention in that there is no direct teaching (i.e. by way of an example) to where the interior surface of the packaging article is actually treated with a hydrogen peroxide solution followed by exposure to an initiation factor, e.g. UV radiation, heat, microwaves etc..

It would have been obvious to one having ordinary skill in the art to use the disclosure of each patent individually as motivation to actually wet the interior surface of the oxygen scavenging packaging article with a hydrogen peroxide solution followed by

exposure of the interior surface to an initiation factor, e.g. UV radiation, heat, microwaves etc. since such a method is directly suggested by each patent.

Response to Arguments

3. Applicant's arguments filed 09/26/03 with the Amendment and Declaration Under 37 CFR 1.131 of ANNE EBBESEN have been fully considered but are not persuasive to put the application in condition for allowance for the reasons set forth above. Additional examiner comments are set forth below.

Applicant's arguments accompanied with the Declaration filed Under 37 CFR 1.131 of ANNE EBBESEN and Exhibit 1 are not deemed to show that the claimed invention of pending claim 1 was reduced to practice prior to November 3, 2000. Said Declaration and said Exhibit 1 are directed to placing Oxygen Scavenging Polymer (i.e. OSP) sheets in glass jars. Prior to placing said OSP sheet inside the glass jars the sheets are wetted with hydrogen peroxide and exposed to UV light. The problem here is that the scope of applicant's independent claim 1 does not encompass a method of placing OSP sheet inside glass jars after the sheets are wetted with hydrogen peroxide and exposed to UV light.

The examiner is well aware of applicant's specification disclosure, as set forth on page 4, lines 15-24, especially lines 21-42 of the specification, wherein applicant states: "The oxygen scavenging layer can be a component of packaging which has non-integral oxygen-scavenging components or layers, e.g. coating, bottle cap liners, adhesives or **non-adhesive sheet insert**, gaskets, sealants or fibrous mat inserts." [Emphasis added

by examiner]. As such, the use of "non-adhesive sheet insert" are not deemed to be outside the scope of applicant's specification, but they are outside the scope of applicant's pending independent claim 1. This becomes very clear when one considers the scope of independent claim 1 in light of applicant's disclosure as set forth on page 13, lines 3-11 of the specification. Independent claim 1 requires that the packaging article comprises an "interior surface" and an "exterior surface" wherein the "interior surface" is wetted with a peroxide solution and is then subjected to an initiating factor. Applicant's disclosure as set forth on page 13, lines 3-11 of the specification defines the "interior surface" of the packaging article to mean: ". . . a surface that, when the packaging article is filled with a product, is partially or wholly in contact with the product.". Likewise, applicant's disclosure as set forth on page 13, lines 3-11 of the specification defines the "exterior surface" of the packaging article to mean: ". . . a surface partially or wholly in contact with the environment (i.e. the environment outside the package), or the surface of an unfolded or unshaped structure that will enter into such contact.". As can be readily seen, the method of placing Oxygen Scavenging Polymer (i.e. OSP) sheets in glass jars does not meet the requirement that the: "exterior surface" of the packaging article is partially or wholly in contact with the environment (i.e. the environment outside the package), or the surface of an unfolded or unshaped structure that will enter into such contact", since the glass gars are not unfolded or unshaped structures.. As such applicant's said Declaration and Exhibit 1 are not deemed to be show a reduction of practice of the claimed invention prior to November 03, 2000.

Furthermore it is noted that applicant did not traverse the prior-art rejection made over Jerdee et al. U.S. patent Number 6,333,087 filed August 27, 1998. As such, the examiner must assume that applicant has accepted the validity of said prior-art rejection over all of applicant's pending claims. In any case, the filed Declaration and Exhibit 1 have no assertion that applicant had reduced to practice the claimed invention prior to Jerdee et al. filing date of August 27, 1998.


Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (703) 308-0446 until 12/04/03; after 12/04/03 my new telephone number will be (571) 272-1117. This examiner can normally be reached on Monday through Thursday from 7:35 a.m. to 6:00 p.m. in the eastern time zone. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 306-2777. The centralized FAX machine number is (703) 872-9306. All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0651. The receptionist is located on the 8th floor of Crystal Plaza 3 (e.g. CP-3) and will be the welcome point for all visitors to the building.


Joseph D. Anthony
Primary Patent Examiner
Art Unit 1714

10/30/03